

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com
abacon@toddfllaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SIDNEY NAIMAN, individually and)
on behalf of all others similarly situated,) Case No.

Plaintiff,)

vs.)

BLACKBIRD LENDING LLC, and)
DOES 1 through 10, inclusive, and each)
of them,)

Defendant.)

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

Plaintiff, SIDNEY NAIMAN (“Plaintiff”), individually and on behalf of all
others similarly situated, alleges the following upon information and belief based

upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of BLACKBIRD LENDING LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1331 because this case arises under a law of the United States, the TCPA.

3. Venue is proper in the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred within this District.

PARTIES

4. Plaintiff, SIDNEY NAIMAN (“Plaintiff”), is a natural person residing in Butte County, California and is a “person” as defined by 47 U.S.C. § 153(39).

5. Defendant, BLACKBIRD LEND LLC (“Defendant”), is a Texas limited liability company headquartered in Texas, and is a “person” as defined by 47 U.S.C. § 153(39).

6. The above-named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the First Amended Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

1 7. Plaintiff is informed and believes that at all relevant times, each and
2 every Defendant was acting as an agent and/or employee of each of the other
3 Defendants and was acting within the course and scope of said agency and/or
4 employment with the full knowledge and consent of each of the other Defendants.
5 Plaintiff is informed and believes that each of the acts and/or omissions complained
6 of herein was made known to, and ratified by, each of the other Defendants.

7 **FACTUAL ALLEGATIONS**

8 8. Beginning in or around September 2019, Defendant contacted
9 Plaintiff on Plaintiff's cellular telephone number ending in -5502, in an attempt to
10 solicit Plaintiff to purchase Defendant's services.

11 9. Defendant used an "automatic telephone dialing system" as defined
12 by *47 U.S.C. § 227(a)(1)* to place its text messages to Plaintiff seeking to solicit its
13 services.

14 10. Defendant contacted or attempted to contact Plaintiff from telephone
15 number (956) 475-5802, confirmed to be Defendant's number.

16 11. Defendant's text messages constituted calls that were not for
17 emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

18 12. During all relevant times, Defendant did not possess Plaintiff's "prior
19 express consent" to receive calls using an automatic telephone dialing system or an
20 artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. §*
21 *227(b)(1)(A)*.

22 **CLASS ALLEGATIONS**

23 13. Plaintiff brings this action individually and on behalf of all others
24 similarly situated, as a member of a proposed class (hereafter "The Class") defined
25 as follows:

26 All persons within the United States who received any
27 text messages from Defendant to said person's cellular
28 telephone made through the use of any automatic
telephone dialing system or an artificial or prerecorded

1 voice and such person had not previously consented to
2 receiving such text messages, within the four years prior
3 to the filing of the Complaint through the date of class
4 certification.

5 14. Plaintiff represents, and is a member of, The Class, consisting of all
6 persons within the United States who received any text messages from Defendant
7 to said person's cellular telephone made through the use of any automatic telephone
8 dialing system or an artificial or prerecorded voice and such person had not
9 previously consented to receiving such text messages within four years prior to the
10 filing of the original Complaint.

11 15. Defendant, its employees and agents are excluded from The Class.
12 Plaintiff does not know the number of members in The Class, but believes the Class
13 members number in the thousands, if not more. Thus, this matter should be certified
14 as a Class Action to assist in the expeditious litigation of the matter.

15 16. The Class is so numerous that the individual joinder of all of its
16 members is impractical. While the exact number and identities of The Class
17 members are unknown to Plaintiff at this time and can only be ascertained through
18 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
19 The Class includes thousands of members. Plaintiff alleges that The Class members
20 may be ascertained by the records maintained by Defendant.

21 17. Plaintiff and members of The Class were harmed by the acts of
22 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
23 and the Class members on their cellular telephones, thereby causing Plaintiff and
24 the Class members to incur certain charges or reduced telephone time for which
25 Plaintiff and the Class members had previously paid, by having to retrieve or
26 administer text messages by Defendant during those illegal calls, and invading the
27 privacy of said Plaintiff and the Class members.

28 18. Common questions of fact and law exist as to all members of The

1 Class which predominate over any questions affecting only individual members of
2 The Class. These common legal and factual questions, which do not vary between
3 Class members, and which may be determined without reference to the individual
4 circumstances of any Class members, include, but are not limited to, the following:

- 5 a. Whether, within the four years prior to the filing of the original
6 Complaint, Defendant made any text messages (other than a
7 call made for emergency purposes or made with the prior
8 express consent of the called party) to a ATDS Class member
9 using any automatic telephone dialing system or any artificial
10 or prerecorded voice, to any telephone number assigned to a
11 cellular telephone service;
- 12 b. Whether Plaintiff and the Class members were damaged
13 thereby, and the extent of damages for such violation; and
- 14 c. Whether Defendant should be enjoined from engaging in such
15 conduct in the future.

16 19. As a person that received text messages from Defendant using an
17 automatic telephone dialing system or an artificial or prerecorded voice, without
18 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The
19 Class.

20 20. Plaintiff will fairly and adequately protect the interests of the members
21 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
22 class actions.

23 21. A class action is superior to other available methods of fair and
24 efficient adjudication of this controversy, since individual litigation of the claims
25 of all Class members is impracticable. Even if every Class member could afford
26 individual litigation, the court system could not. It would be unduly burdensome to
27 the courts in which individual litigation of numerous issues would proceed.
28 Individualized litigation would also present the potential for varying, inconsistent,

1 or contradictory judgments and would magnify the delay and expense to all parties
2 and to the court system resulting from multiple trials of the same complex factual
3 issues. By contrast, the conduct of this action as a class action presents fewer
4 management difficulties, conserves the resources of the parties and of the court
5 system, and protects the rights of each Class member.

6 22. The prosecution of separate actions by individual Class members
7 would create a risk of adjudications with respect to them that would, as a practical
8 matter, be dispositive of the interests of the other Class members not parties to such
9 adjudications or that would substantially impair or impede the ability of such non-
10 party Class members to protect their interests.

11 23. Defendant has acted or refused to act in respects generally applicable
12 to The Class, thereby making appropriate final and injunctive relief with regard to
13 the members of The Class as a whole.

14 **FIRST CAUSE OF ACTION**

15 **Negligent Violations of the Telephone Consumer Protection Act**

16 **47 U.S.C. § 227(b)**

17 24. Plaintiff repeats and incorporates by reference into this cause of action
18 the allegations set forth above at Paragraphs 1-23.

19 25. The foregoing acts and omissions of Defendant constitute numerous
20 and multiple negligent violations of the TCPA, including but not limited to each
21 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
22 *47 U.S.C. § 227(b)(1)(A)*.

23 26. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
24 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
25 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

26 27. Plaintiff and the Class members are also entitled to and seek injunctive
27 relief prohibiting such conduct in the future.

28 **SECOND CAUSE OF ACTION**

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227(b)(1)(A)*.

30. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act**

47 U.S.C. § 227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3).
- Any and all other relief that the Court deems just and proper.

32. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 9th Day of September, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman, P.C.
Attorney for Plaintiff

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